

BUNGE CORP.

FEBRUARY 28, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 7075]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7075) for the relief of Bunge Corp., having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

At the end of bill add:

: *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

This bill provides for the payment to the Bunge Corporation of New York the sum of \$1,087.50 in settlement of its claim arising from the erroneous liquidation of New York consumption entry No. 702540 of July 7, 1952, under which entry certain merchandise was incorrectly classified, resulting in excessive customs duties being charged against said merchandise, valued at \$4,350.

The record shows that the claimant corporation imported 5,000 dozens 17-inch square hemmed silk scarves, upon which the customs collector charged a 60 percent ad valorem duty, or \$2,610.

In a decision of March 18, 1954, the United States Customs Court held such merchandise to be properly classifiable as silk wearing apparel under paragraph 1210 of the Tariff Act dutiable at the rate of 35½ percent ad valorem, or \$1,413.75.

While the above decision was not rendered until approximately 2 years after the importation of the scarves in question, it is obvious that the articles would come under the classification of "clothing and articles of wearing apparel of every description, manufactured wholly

or in part, wholly or in chief value of silk, and not especially provided for," and not under the classification of "handkerchiefs and woven mufflers, wholly or in chief value of silk * * *" upon which classification the customs officer relied in making the charge of 60 percent ad valorem.

The files also show that paragraph 1210 of the Tariff Act of 1930, as modified provides for a charge of 35½ percent ad valorem on articles of "clothing and articles of wearing apparel" as quoted above.

It appears to us that if the silk scarves in question were "clothing and wearing apparel" under the decision of the United States Customs Court in 1954 they were also "clothing and wearing apparel" in 1952, at which time they were imported. The fact that they were erroneously classified does not change their intrinsic character or correct designation, and it is apparent that they were not "handkerchiefs and woven mufflers."

Therefore it appears to us that it is only just and right to refund to the Bunge Corp. the difference between the 60 percent charged and collected on the erroneous classification, and the 35½ percent rightfully chargeable on the correct classification, which amounts to \$1,196.25.

Inasmuch as the amount set out in the bill is mistakenly stated as \$1,087.50, we recommend that the bill be amended to state that payment shall be in the amount of \$1,196.25, and that when so amended it be passed.

BUNGE CORP., *New York 4, N. Y.*

AFFIDAVIT

STATE OF NEW YORK,
County of New York, City of New York, ss:

A MEMORANDUM IN SUPPORT OF H. R. 7075

On July 7, 1952, Bunge Corp., with offices at 42 Broadway, New York, N. Y., made customs entry No. 702540 covering an importation of 5,000 dozen habutae silk scarves, weight 4 momme, size 17 inches by 17 inches. This customs entry was liquidated on March 6, 1953, and duties collected amounting to \$2,610. This importation was valued at \$4,350 and an ad valorem duty of 60 percent was collected with the classification of the importation under the provision of paragraph 1209 of the Tariff Act of 1930 reading as follows:

"Handkerchiefs and woven mufflers wholly or in chief value of silk, finished or unfinished * * *, hemmed or hemstitched, 60 per centum ad valorem."

On March 18, 1954, approximately 2 years subsequent to the date of entry of the importation in question, a decision was rendered by the Second Division of the United States Customs Court, reported as C. D. 1596, that merchandise, similar in all respect to the instant importation was properly classifiable under the provision for "clothing and articles of wearing apparel of every description, manufactured wholly or in part, wholly or in chief value of silk, and not specially provided for," in paragraph 1210 of the Tariff Act of 1930 as modified, at 35 percent ad valorem.

The United States Court of Customs and Patent Appeals on February 21, 1955, affirmed the decision of the United States Customs Court, which decision of affirmance was published as C. A. D. 585.

From these decisions, it is evident that the tariff classification of the above-described importation as handkerchiefs wholly or in chief value of silk, finished or unfinished, hemmed or hemstitched, was erroneous. The proper classification is as wearing apparel. The difference between the rate of duty at 60 percent and 32½ percent, based upon the dutiable value of \$4,350 is \$1,196.25, which as customs duties, was illegally collected and should be refunded to Bunge Corp., the importer. The rate of duty of 35 percent on importations of wearing apparel was reduced to 32½ percent in the reciprocal trade agreement negotiated in Torquay, England,

in 1951. The latter rate of duty was in effect on July 7, 1952, the date of importation of the instant merchandise.

W. MEYER,
Assistant Vice President.

Sworn and subscribed this 6th day of July 1955.

[SEAL]

FLORENCE V. PRAGER,
Notary Public.

TREASURY DEPARTMENT,
Washington, November 10, 1955.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of July 14, 1955, requesting the views of this Department on H. R. 7075, for the relief of Bunge Corp. The bill would pay to the corporation the amount of \$1,087.50 which is stated to have been paid on account of the alleged erroneous liquidation of New York consumption entry No. 702540 of July 7, 1952.

This entry covered 5,000 dozens of 17-inch square hemmed silk scarves valued at 87 cents per dozen which the importer entered at 60 percent ad valorem. The collector liquidated the entry on March 6, 1953, assessing duty at the same rate under the provision for hemmed silk handkerchiefs in paragraph 1209, Tariff Act of 1930, in accordance with established and uniform practice for merchandise of this type. No protest was filed against the action of the collector.

The importer failed to avail himself of the right to protest the collector's decision as to the rate and amount of duties chargeable within 60 days after liquidation of the entry. Accordingly, the liquidation is final and conclusive upon all persons, including the United States, under section 514 of the Tariff Act.

Subsequently, in a suit filed by another importer of similar merchandise, the United States Customs Court, in a decision of March 18, 1954, published as C. D. 1596 (32 Cust. Ct. 146), held such merchandise to be properly classifiable as silk wearing apparel under paragraph 1210 of the Tariff Act dutiable at the rate of 35 percent ad valorem. The Court of Customs and Patent Appeals, in a decision of February 21, 1955, published as C. A. D. 585 (90 Treas. Dec. No. 13, p. 42), affirmed the judgment of the lower court. These court decisions have no effect on the classification of the merchandise involved in the bill since the entry was liquidated and became final prior to the dates of the decisions.

The enactment of this legislation for the benefit of one particular corporation, authorizing a refund of duties legally assessed would establish an undesirable precedent and create dissatisfaction among other importers who were obliged to pay duties on similar goods imported under like circumstances. Therefore, the Department cannot recommend the enactment of the proposed legislation.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your committee.

Very truly yours,

DAVID W. KENDALL,
Acting Secretary of the Treasury.

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